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6 Attorneys for Complainant

7 **BEFORE THE**
8 **PHYSICAL THERAPY BOARD OF CALIFORNIA**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against: Case No. 1D-2002-62977

11 MORRIS SHAPOW
2080 Century Park East, Suite 500
12 Los Angeles, California 90067

A C C U S A T I O N

13 Physical Therapist License No. PT 6166

14 Respondent.

15 _____
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17 Complainant alleges:

18 **PARTIES**

19 1. Steven K. Hartzell (Complainant) brings this Accusation solely in his
20 official capacity as the Executive Officer of the Physical Therapy Board of California,
21 Department of Consumer Affairs.

22 2. On or about August 22, 1972, the Physical Therapy Board of California
23 issued Physical Therapist License Number PT 6166 to Morris Shapow (Respondent). The
24 Physical Therapist License was in full force and effect at all times relevant to the charges
25 brought herein and will expire on January 31, 2004, unless renewed.


26 **JURISDICTION**
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1 3. This Accusation is brought before the Physical Therapy Board of
2 California (Board), under the authority of the following sections of the Business and Professions
3 Code (Code).

4 4. Section 2609 of the Code states:

5 The board shall issue, suspend, and revoke licenses and approvals to practice
6 physical therapy as provided in this chapter.

7 5. Section 2660 of the Code states:

8 The board may, after the conduct of appropriate proceedings under the
9  Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose
10 probationary conditions upon, or issue subject to terms and conditions any license, certificate, or
11 approval issued under this chapter for any of the following causes:

- 12  (a) Advertising in violation of Section 17500.
- 13 (b) Fraud in the procurement of any license under this chapter.
- 14 (c) Procuring or aiding or offering to procure or aid in criminal abortion.
- 15 (d) Conviction of a crime which substantially relates to the qualifications,
16 functions, or duties of a physical therapist. The record of conviction or a certified
17 copy thereof shall be conclusive evidence of that conviction.
- 18 (e) Impersonating or acting as a proxy for an applicant in any examination
19 given under this chapter.
- 20 (f) Habitual intemperance.
- 21 (g) Addiction to the excessive use of any habit-forming drug.
- 22 (h) Gross negligence in his or her practice as a physical therapist.
- 23 (i) Conviction of a violation of any of the provisions of this chapter or of
24 the State Medical Practice Act, or violating, or attempting to violate, directly or
25 indirectly, or assisting in or abetting the violating of, or conspiring to violate any
26 provision or term of this chapter or of the State Medical Practice Act.

1 (j) The aiding or abetting of any person to violate this chapter or any
2 regulations duly adopted under this chapter.

3 (k) The aiding or abetting of any person to engage in the unlawful
4 practice of physical therapy.

5 (l) The commission of any fraudulent, dishonest, or corrupt act which is
6 substantially related to the qualifications, functions, or duties of a physical
7 therapist.

8 (m) Except for good cause, the knowing failure to protect patients by
9 failing to follow infection control guidelines of the board, thereby risking
10 transmission of blood-borne infectious diseases from licensee to patient, from
11 patient to patient, and from patient to licensee. In administering this subdivision,
12 the board shall consider referencing the standards, regulations, and guidelines of
13 the State Department of Health Services developed pursuant to Section 1250.11
14 of the Health and Safety Code and the standards, regulations, and guidelines
15 pursuant to the California Occupational Safety and Health Act of 1973 (Part 1
16 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing
17 the transmission of HIV, Hepatitis B, and other blood-borne pathogens in health
18 care settings. As necessary, the board shall consult with the Medical Board of
19 California, the California Board of Podiatric Medicine, the Board of Dental
20 Examiners of California, the Board of Registered Nursing, and the Board of
21 Vocational Nursing and Psychiatric Technicians, to encourage appropriate
22 consistency in the implementation of this subdivision.

23 The board shall seek to ensure that licensees are informed of the responsibility of
24 licensees and others to follow infection control guidelines, and of the most recent scientifically
25 recognized safeguards for minimizing the risk of transmission of blood-borne infectious
26 diseases.

1 6. Section 2661.5 of the Code states:

2 (a) In any order issued in resolution of a disciplinary proceeding before
3 the board, the board may request the administrative law judge to direct any
4 licensee found guilty of unprofessional conduct to pay to the board a sum not to
5 exceed the actual and reasonable costs of the investigation and prosecution of the
6 case.

7 (b) The costs to be assessed shall be fixed by the administrative law judge
8 and shall not in any event be increased by the board. When the board does not
9 adopt a proposed decision and remands the case to an administrative law judge,
10 the administrative law judge shall not increase the amount of the assessed costs
11 specified in the proposed decision.

12 (c) When the payment directed in an order for payment of costs is not
13 made by the licensee, the board may enforce the order of payment by bringing an
14 action in any appropriate court. This right of enforcement shall be in addition to
15 any other rights the board may have as to any licensee directed to pay costs.

16 (d) In any judicial action for the recovery of costs, proof of the board's
17 decision shall be conclusive proof of the validity of the order of payment and the
18 terms for payment.


19 (e) (1) Except as provided in paragraph (2), the board shall not renew
20 or reinstate the license or approval of any person who has failed to pay all
21 of the costs ordered under this section.

22 (2) Notwithstanding paragraph (1), the board may, in its
23 discretion, conditionally renew or reinstate for a maximum of one year the
24 license or approval of any person who demonstrates financial hardship and
25 who enters into a formal agreement with the board to reimburse the board
26 within that one year period for those unpaid costs.

1 (f) All costs recovered under this section shall be deposited in the
2 Physical Therapy Fund as a reimbursement in either the fiscal year in which the
3 costs are actually recovered or the previous fiscal year, as the board may direct.

4 7. Section 2630 of the Code states:

5 It is unlawful for any person or persons to practice, or offer to practice, physical
6 therapy in this state for compensation received or expected, or to hold himself or herself
7 out as a physical therapist, unless at the time of so doing the person holds a valid,
8 unexpired, and unrevoked license issued under this chapter.

9  Nothing in this section shall restrict the activities authorized by their licenses on
10 the part of any persons licensed under this code or any initiative act, or the activities
11 authorized to be performed pursuant to Article 4.5 (commencing with Section 2655) or
12 Chapter 7.7 (commencing with Section 3500).

13 A physical therapist licensed pursuant to this chapter may utilized the services of
14 one aide engaged in patient-related tasks to assist the physical therapist in his or her
15 practice of physical therapy. "Patient-related task" means a physical therapy service
16 rendered directly to the patient by an aide, excluding non-patient-related tasks. "Non-
17 patient-related task" means a task related to observation of the patient, transport of the
18 patient, physical support only during gait or transfer training, housekeeping duties,
19 clerical duties, and similar functions. The aide shall at all times be under the orders,
20 direction, and immediate supervision of the physical therapist. Nothing in this section
21 shall authorize an aide to independently perform physical therapy or any physical therapy
22 procedure. The board shall adopt regulations that set forth the standards and
23 requirements for the orders, direction, and immediate supervision of an aide by a physical
24 therapist. The physical therapist shall provide continuous and immediate supervision of
25 the aide. The physical therapist shall be in the same facility as, and in proximity to, the
26 location where the aide is performing patient-related tasks, and shall be readily available
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1 at all times to provide advice or instruction to the aide. When patient-related tasks are
2 provided to a patient by an aide, the supervising physical therapist shall, at some point
3 during the treatment day, provide direct service to the patient as treatment for the
4 patient's condition, or to further evaluate and monitor the patient's progress, and shall
5 correspondingly document the patient's record.

6 The administration of massage, external baths, or normal exercise not a part of a
7 physical therapy treatment shall not be prohibited by this section.

8 8. Section 2655 of the Code states:

9 As used in this article:

10 (a) "Physical therapist" means a physical therapist licensed by the board.


11 (b) "Physical therapist assistant" means a person who meets the
12 qualifications stated in Section 2655.3 and who is approved by the board to assist
13  in the provision of physical therapy under the supervision of a physical therapist
14 who shall be responsible for the extent, kind, and quality of the services provided
15 by the physical therapist assistant.

16 (c) "Physical therapist assistant" and "physical therapy assistant" shall be
17 deemed identical and interchangeable.

18 9. California Code of Regulations, title 16, section 1399, states:

19 "A physical therapy aide is an unlicensed person who assists a physical
20 therapist and may be utilized by a physical therapist in his or her practice by performing
21 nonpatient related tasks, or by performing patient related tasks.

22 "(a) As used in these regulations:

23  "(1) A 'patient related task' means a physical therapy service rendered directly to
24 the patient by an aide, excluding nonpatient related tasks as defined below.

25 "(2) A 'nonpatient related task' means a task related to observation of the patient,
26 transport of patients, physical support only during gait or transfer training, housekeeping
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1 duties, clerical duties and similar functions.

2 "(b) 'Under the orders, direction and immediate supervision' means:

3 "(1) Prior to the initiation of care, the physical therapist shall evaluate every
4 patient prior to the performance of any patient related tasks by the aide. The evaluation
5 shall be documented in the patient's record.

6 "(2) The physical therapist shall formulate and record in the patient's record a
7 treatment program based upon the evaluation and any other information available to the
8 physical therapist, and shall determine those patient related tasks which may be assigned
9 to an aide. The patient's record shall reflect those patient related tasks that were rendered
10 by the aide, including the signature of the aide who performed those tasks.

11 "(3) The physical therapist shall assign only those patient related tasks that can be
12 safely and effectively performed by the aide. The supervising physical therapist shall be
13 responsible at all times for the conduct of the aide while he or she is on duty.

14 "(4) The physical therapist shall provide continuous and immediate supervision of
15 the aide. The physical therapist shall be in the same facility as and in immediate
16 proximity to the location where the aide is performing patient related tasks, and shall be
17 readily available at all times to provide advice or instruction to the aide. When patient
18 related tasks are provided a patient by an aide the supervising physical therapist shall at
19 some point during the treatment day provide direct service to the patient as treatment for
20 the patient's condition or to further evaluate and monitor the patient's progress, and so
21 document in the patient's record.

22 "(5) The physical therapist shall perform periodic re-evaluation of the patient as
23 necessary and make adjustments in the patient's treatment program. The re-evaluation
24 shall be documented in the patient's record.

25 "(6) The supervising physical therapist shall countersign with their first initial and
26 last name, and date all entries in the patient's record, on the same day as patient related
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1 tasks were provided by the aide."

2 FIRST CAUSE FOR DISCIPLINE

3 (Aiding and Abetting Unlicensed Practice of Physical Therapy)

4 10. Respondent is subject to disciplinary action under section 2660,
5 subsections (j) and (k), of the Code in that respondent aided and abetted the unlicensed practice
6 of physical therapy. The circumstances are as follows:

7 A. Respondent owns and operates Wellness Rehabilitation Services located at
8 2080 Century Park East, Suite 500, Los Angeles, California, where respondent provides
9 physical therapy services directly and through the employment of physical therapists and
10 physical therapy aides. Physical therapy aquatic services are also offered by respondent
11 at an off site pool located at the Beverly Hills Community Sports Center, 9930 Santa
12 Monica Blvd., Los Angeles, California.

13 B. On or about January 14, 2002, physical therapy aide Naum Filhum, an
14 employee of Wellness Rehabilitation Services, provided physical therapy services to
15 eleven patients between the hours of 8:00 a.m. and 3:50 p.m. at respondent's office. At
16 the time that said physical therapy services were provided, physical therapy aide Naum
17 Filhum was not under the orders, direction, and immediate supervision of respondent, or
18 of any other physical therapist assigned by respondent to supervise physical therapy
19 aides, as required by section 2630 of the Code, and neither respondent nor any other
20 physical therapist assigned by respondent to supervise physical therapy aides was in the
21 same facility, nor within immediate proximity to the aide nor readily available as
22 required by California Code of Regulations, title 16, section 1399.

23 C. On or about January 15, 2002, physical therapy aide Hilde Brooks, an
24 employee of Wellness Rehabilitation Services, provided physical therapy aquatic services
25 to patients at the pool at the Beverly Hills Community Sports Center. At the time that
26 said physical therapy was provided, physical therapy aide Hilde Brooks was not under

1 the orders, direction, and immediate supervision of respondent, or of any other physical
2 therapist assigned by respondent to supervise physical therapy aides, as required by
3 section 2630 of the Code, and neither respondent nor any other physical therapist
4 assigned by respondent to supervise physical therapy aides was in the same facility, nor
5 within immediate proximity to the aide nor readily available as required by California
6 Code of Regulations, title 16, section 1399.

7 D. On or about January 17, 2002, physical therapy aide Hilde Brooks, an
8 employee of Wellness Rehabilitation Services, provided physical therapy aquatic services
9 to patients at the pool at the Beverly Hills Community Sports Center. At the time that
10 said physical therapy was provided, physical therapy aide Hilde Brooks was not under
11 the orders, direction, and immediate supervision of respondent, or of any other physical
12 therapist assigned by respondent to supervise physical therapy aides, as required by
13 section 2630 of the Code, and neither respondent nor any other physical therapist
14 assigned by respondent to supervise physical therapy aides was in the same facility, nor
15 within immediate proximity to the aide nor readily available as required by California
16 Code of Regulations, title 16, section 1399.

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18 SECOND CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct)

20 11. Respondent is subject to disciplinary action under section 2660 of the
21 Code in that respondent engaged in unprofessional conduct. The circumstances are as follows:

22 A. The facts and circumstances alleged in paragraph 10 above are
23 incorporated here as if fully set forth.

24 PRAYER



25 WHEREFORE, Complainant requests that a hearing be held on the matters herein
26 alleged, and that following the hearing, the Physical Therapy Board of California issue a
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1 decision:

2 1. Revoking or suspending Physical Therapist License Number PT 6166,
3 issued to Morris Shapow.

4 2. Ordering Morris Shapow to pay the Physical Therapy Board of California
5 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
6 Professions Code section 2661.5.

7 3. Taking such other and further action as deemed necessary and proper.

8 DATED: July 31, 2002

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10 Original signed by Steven K. Hartzell
11 STEVEN K. HARTZELL
12 Executive Officer
13 Physical Therapy Board of California
14 Department of Consumer Affairs
15 State of California
16 Complainant
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